

REMARKS

In a Notice of Non-Compliant Amendment dated April 19, 2007, the Examiner alleged that each claim in the Amendment filed on February 16, 2007 “has not been provided with the proper status identifier, and as such, the individual status of each claim cannot be identified.” In a telephone voicemail message received on May 1, 2007 from Examiner Johannes P. Mondt, clarification was provided to Applicants’ undersigned representative that the non-elected claims should have been indicated as “Withdrawn” in the Amendment filed on February 16, 2007.

Applicants respectfully traverse such an indication for at least the following reasons. The election requirement dated January 19, 2007 required Applicants to: 1) “elect a single species to which the claims shall be restricted if no generic claim is finally held to be allowable,” and to 2) “identify the claims readable on the elected species, including any claims subsequently added.”

Applicants fully complied with these requirements in the response filed on February 16, 2007 by: 1) electing Species II for examination, and 2) identifying independent claim 2, and newly-added dependent claims 5 and 6, as reading on Species II.

Applicants’ undersigned representative placed a telephone call to Examiner Johannes P. Mondt on May 1, 2007 in order to traverse the issuance of the Notice of Non-Compliant Amendment dated April 19, 2007. Because Applicants were unable to reach Examiner Mondt by telephone on May 1, 2007, Applicants’ undersigned representative conducted a telephone discussion with Supervisory Patent Examiner Jack W. Keith on May 1, 2007. Applicants’ undersigned representative explained to Supervisory Patent Examiner Keith that it appeared that the Notice of Non-Compliant Amendment dated April 19, 2007 issued in error because

Applicants had fully complied with all requirements of the Office Action dated January 19, 2007 in the response filed on February 16, 2007 in this application.

As to the status identifier situation discussed above, Applicants' undersigned representative explained to Supervisory Patent Examiner Keith that it was Applicants' understanding that once Applicants have elected a species and have presented their indication of which claims read on the elected species, the Examiner would then confirm whether or not the Examiner agrees with Applicants' indication by specifying which claims are actually "withdrawn" in the next Office Communication. For example, 37 C.F.R. § 1.142(b) indicates that "[c]laims to the invention or inventions not elected ... are nevertheless withdrawn from further consideration by the examiner (emphasis added)..." In other words, Applicants understand that it is the Examiner, not Applicants, who makes the determination of which claims are to actually be withdrawn from examination based on Applicants' election. As a result, Applicants need to await the Examiner's actual determination of withdrawn claims before making indications of such in status identifiers.

Supervisory Patent Examiner Keith agreed with Applicants' understanding in this regard and indicated that Applicants should file a response to the Notice of Non-Compliant Amendment explaining their above-described position. Accordingly, Applicants understand that no further action needs to be taken by them until after the issuance of a first Office Action on the merits. Applicants understand that in the first Office Action on the merits, the Examiner will indicate which claims are withdrawn and which are under consideration.

Applicants respectfully assert that no fee is due in connection with the filing of this response. However, if there are any fees due in connection with the filing of this response, please charge those fees to Deposit Account No. 50-0573.

Respectfully submitted,

DRINKER BIDDLE & REATH LLP

Dated: May 2, 2007

By:

A handwritten signature in black ink, appearing to read "Paul A. Fournier", written over a horizontal line.

Paul A. Fournier

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